

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Sung Ho Son)
 Personal Property Account Number P-088124) Davidson County
 Tax Year 2007)

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

On November 27, 2007, the State Board of Equalization (“State Board”) received the above-styled appeal by Byung Sik Son on behalf of Sung Ho Son. The Sons are owners of Son’s Upholstering Company.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. The undersigned administrative judge conducted a jurisdictional hearing relative to this matter on January 17, 2008, in Nashville, Davidson County, Tennessee. Present at the hearing was Robert L. Hewell, Kenny Venson, from the Davidson County Assessor's Office; and Attorney Jenny Hayes from the Metropolitan Legal Department.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Son's Upholstering Company is an upholstery business located at 4308 Charlotte Avenue, a location in Nashville and Davidson County. According to the tax records, the business has been in operation since 1997.

The initial issue to be decided is whether or not the State Board of Equalization has the jurisdiction to hear this taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. T.C.A. §§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted, if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. T.C.A. §§ 67-5-508(b)(2); 67-5-1412 (e). Nevertheless, the legislature has also provided that:

The taxpayer shall have a right to a hearing and determination to show **reasonable cause** for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made (*emphasis added*).

In analyzing and reviewing T.C.A. § 67-5-1412 (e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge

of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except where the failure to meet them is **due to illness or other circumstances beyond the taxpayer's control.** (*emphasis added*), *Associated Pipeline Contractors Inc.*, (Williamson County Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Additionally, an Attorney General's Opinion¹ and numerous decisions has thoroughly discussed and espoused the primary principles by which any analysis of jurisdictional issues are conducted. Thus for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Davidson County Board of Equalization. It is the taxpayer's burden to prove that he is entitled to the requested relief.

Generally, except in the event of insufficient notice of a change in classification and/or valuation, a property assessment which is not appealed to the county board of equalization during its regular annual session becomes final. See T.C.A. §§ 67-5-1401 and 67-5-1412(b). In 1991, the General Assembly amended the law by affording a taxpayer the opportunity for a hearing before the State Board to demonstrate "reasonable cause" for failure to appeal the property in question to the county board of equalization (or for failure to appeal to the State Board in a timely manner).

Mr. Son stated that he did not remember getting the Notice of Appraised Value and that they sometimes have problems with their mail. Mr. Son stated that "sometimes the mail falls out of the mail box". Mr. Venson from the County testified that their records show that a schedule B² has never been timely filed by these taxpayers. Mr. Son's son stated that he remembers signing a form and sending it back to the County but that he did not fill out anything he just signed it and sent it back. Mr. Son had no further explanation for failing to follow the law.

Regrettably in this case, Mr. Son's explanation does not establish "reasonable cause"³ and, therefore, he has not met his burden of proof.⁴

ORDER

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

¹ Written October 8, 1992, at 92-62 by Office of the Attorney General

² T.C.A. § 67-3-903

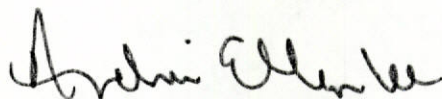
³ Reasonable cause has loosely been defined as circumstances beyond the control of the taxpayer. (*citations omitted*).

⁴ Rules of the State Board of Equalization, Rule 0600-1-.11(1)

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 13th day of March, 2008.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Byung Sik Son
Jenny Hayes, Esq.
Jo Ann North, Assessor of Property